

MONTANA LEGISLATIVE HISTORY

Chapter 405 19 89

Bill H 578 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) _____ c

2/16 ☒ c

_____ c

_____ c

Date Out

2/16 ☒ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/17 ☒ c

_____ c

3/17 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 578

INTRODUCED BY RICE, MERCER, SPAETH, MCDONOUGH

IN THE HOUSE

FEBRUARY 4, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 16, 1989

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 17, 1989

PRINTING REPORT.

FEBRUARY 18, 1989

SECOND READING, DO PASS.

FEBRUARY 21, 1989

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 17, 1989

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 18, 1989

SECOND READING, CONCURRED IN.

MARCH 21, 1989

THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *578*
2 INTRODUCED BY *Rice Mercer Spaulth*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN
6 OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY
7 RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN
8 CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED
9 PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR
10 CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN;
11 AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 40-4-217, MCA, is amended to read:

15 "40-4-217. Visitation. (1) A parent not granted
16 custody of the child is entitled to reasonable visitation
17 rights unless the court finds, after a hearing, that
18 visitation would endanger seriously the child's physical,
19 mental, moral, or emotional health.

20 (2) In a proceeding for dissolution of marriage or
21 legal separation, the court may, upon the petition of a
22 grandparent, grant reasonable visitation rights to the
23 grandparent of the child if the court finds, after a
24 hearing, that the visitation would be in the best interest
25 of the child.

1 (3) The court may modify an order granting or denying
2 visitation rights whenever modification would serve the best
3 interest of the child; but the court ~~shall~~ may not restrict
4 a parent's visitation rights unless it finds that the
5 visitation would endanger seriously the child's physical,
6 mental, moral, or emotional health or unless the provisions
7 of subsection (6) apply.

8 (4) So long as a noncustodial parent who has
9 visitation rights under a decree or a custody agreement
10 remains a resident of this state, a resident custodial
11 parent shall, before changing the child's residence to
12 another state and unless the noncustodial parent has given
13 written consent, give written notice to the noncustodial
14 parent, as provided in subsection (5).

15 (5) The written notice required by subsection (4) must
16 be served personally or given by certified mail not less
17 than 30 days before the proposed change in residence. Proof
18 of service must be filed with the court that issued the
19 custody order. The purpose of the notice is to allow the
20 noncustodial parent to seek a modification of his visitation
21 schedule.

22 (6) (a) If a noncustodial parent has been convicted of
23 any of the crimes listed in subsection (6)(c), the custodial
24 parent or any other person who has been granted custody of
25 the child pursuant to court order may file an objection to

visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

- (i) deliberate homicide, as described in 45-5-102;
- (ii) mitigated deliberate homicide, as described in 45-5-103;
- (iii) sexual assault, as described in 45-5-502;
- (iv) sexual intercourse without consent, as described in 45-5-503;
- (v) incest, as described in 45-5-507;
- (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) sexual abuse of children, as described in 45-5-625."

Section 2. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

1 (ii) attempts to frustrate or deny the noncustodial
2 parent's exercise of visitation rights; or

3 (f) the custodial parent has changed or intends to
4 change the child's residence to another state.

5 (2) The court shall presume the custodian is not
6 acting in the child's best interest if the custodian does
7 any of the acts specified in subsection (1)(e) or (6).

8 (3) The court may modify the prior decree based on
9 subsection (1)(f) to provide a new visitation schedule and
10 to apportion transportation costs between the parents.

11 (4) Attorney fees and costs shall be assessed against
12 a party seeking modification if the court finds that the
13 modification action is vexatious and constitutes harassment.

14 (5) A custody decree may be modified upon the death of
15 the custodial parent pursuant to 40-4-221.

16 (6) (a) If a parent has been convicted of any of the
17 crimes listed in subsection (6)(c), the other parent or any
18 other person who has been granted custody of the child
19 pursuant to court order may file an objection to the current
20 custody order with the court. The parent or other person
21 having custody shall give notice to the convicted parent of
22 the objection as provided by the Montana Rules of Civil
23 Procedure, and the convicted parent shall have 20 days from
24 the notice to respond. If the convicted parent fails to
25 respond within 20 days, the custody rights of the convicted

1 parent are suspended until further order of the court. If
2 the convicted parent responds and objects, a hearing must be
3 held within 30 days of the response.

4 (b) The convicted parent has the burden at the hearing
5 to prove that custody by the convicted parent does not
6 seriously endanger the child's physical, mental, moral, or
7 emotional health and that the modification of custody is not
8 in the best interest of the child.

9 (c) This subsection (6) applies to the following
10 crimes:

11 (i) deliberate homicide, as described in 45-5-102;

12 (ii) mitigated deliberate homicide, as described in
13 45-5-503;

14 (iii) sexual assault, as described in 45-5-502;

15 (iv) sexual intercourse without consent, as described
16 in 45-5-503;

17 (v) incest, as described in 45-5-507;

18 (vi) aggravated promotion of prostitution of a child,
19 as described in 45-5-603(1)(b);

20 (vii) endangering the welfare of children, as described
21 in 45-5-622;

22 (viii) sexual abuse of children, as described in
23 45-5-625."

-End-

would be done by people who specialize in the electronics field.

Rep. Aafedt asked if this could be adjusted to the alcohol content as the previous bill stated they wanted to change it to .08. Mr. Seifert answered yes, they are calibrated at the factory and that is what the service centers are also responsible for. They re-check the calibration a minimum of every sixty days. Rep. Aafedt asked if this checks for drugs, such as cocaine etc. Mr. Seifert stated no, that is a mis-interpretation. The technology is being developed with the Home Arrest Program and should be able to check for drugs by the end of the year, but not on the interlock system at this point.

Rep. Brooke questioned Mr. Jewell how realistic this program would be, especially with the service checks for non-tampering and the follow-up through that six month period. Mr. Jewell stated it would be a problem in the smaller more rural communities. Right now this whole idea would be a viable option in Missoula, Billings and Great Falls.

Rep. Boharski referred a technology question to Mr. Seifert concerning temperature ranges with circuits. Mr. Seifert stated that has been addressed and 40 below zero is where they would start having trouble.

Closing by Sponsor: Rep. Eudaily referred the committee to the sheet handed out that showed there are ten states that already have the system in place (EXHIBIT 2). It may be a new device, but it is one that should be looked into soon to see if it is useable in the State of Montana. If this bill does nothing more it lets the Dept. of Justice establish rules that can be used in the future for this type of machine and allows judges to use it on an optional basis. Public safety on the highways is imperative.

HEARING ON HOUSE BILL 578

Presentation and Opening Statement by Sponsor:

Rep. Jim Rice, House District 43 explained how the bill worked as it is divided into two sections. The first section is an amendment to the visitation portion of the code and the second section is an amendment of the child custody provision of the code. He referred the committee to the underlined portion at the bottom portion of page 2.

Testifying Proponents and Who They Represent:

Joan Uda, President of State Bar, Family and Children's Law
Section
Joan Rebich, Licensed Professional Counselor
Becky Malensek, Self

Dr. Karen Landers, Pediatrician from Helena, Representing Montana Council for Maternal and Child Health

John Connor, County Prosecutor's Services Bureau, Dept. of Justice

Peter Funk, Assistant Attorney General, Dept. of Justice

John Madsen, Dept. of Family Services

Christie Marron, Montana Council of Mental Health Centers

Proponent Testimony:

Joan Uda commented that this is a good bill in that it is not a bill that will affect a lot of people. There are not that many people convicted of these crimes of felonies, but it does exactly what Rep. Rice says it will do. It shifts the burden where it belongs, on the parent who has created the problem. She stated this is not a common situation, but when it exists, it is a serious situation and urged passage of the bill.

Joan Rebich commented that she works specifically with sexual abuse cases. She has done some work with familial offenders and family therapy in this area. If a person has committed such a crime and wants to prove to the court that he is a fit parent and fit to have unsupervised custody or visitation with his child, then he would have to show evidence that he had treatment for his offender behavior. Ms. Rebich commented that it is extremely unusual, almost unheard of an offender getting better without having treatment. The responsibility will be on him to get treatment if he wants visitation with his child so he can show the court that he is fit to supervise the child. Ms. Rebich stated that she feels this will put the responsibility where it belongs and urged the committee to pass the bill.

Becky Malensek referred to letters from Brenda Nordlund, Montana Womens' Lobbyist Fund (EXHIBIT 5) and Ron Silvers, Program Director of Sexual Assault Treatment Program (EXHIBIT 6). Mrs. Malensek stated that she received a copy of a bill from Colorado, as that state recently passed this into law in March of 1988. There are currently three other states that are working on this piece of legislation; Hawaii, Texas, and Massachusetts.

Mrs. Malensek submitted before the committee written testimony voicing her strong support of HB 578 (See EXHIBIT 7) as well as testimony from Susan Sandwell, President, Montana Committee for Prevention of Child Abuse (EXHIBIT 8).

Dr. Karen Landers stood in favor of the proposed legislation (EXHIBIT 9).

John Connor, representing the Montana County Attorney's Association commented that the Association supports the bill and they encourage the committee's Do Pass recommendation.

Peter Funk voiced the Attorney General's support for the proposed legislation for two reasons: 1.) This bill appropriately addresses the best interests of children. That phrase is used throughout the Montana Code when decisions are made either regarding custody or regarding treatment. 2.) HB 578 will help people who are in the position of the custodial parent accomplish what the bill provides . . . an avenue for them to eliminate visitation if the court would find that the visitation is harmful. He complimented Mrs. Malensek for her efforts and thanked her on behalf of the children.

John Madsen urged a Do Pass recommendation and stated that the Dept. of Family Services strongly supports this legislation.

Christie Marron urged the committee to support HB 578.

Additional testimony was submitted before the committee by Margaret Stuart, Director, Social Work Program at Carroll College (EXHIBIT 10), as well as supporting signatures of those in favor of HB 578 (EXHIBIT 11).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Hannah asked Rep. Rice to refer to page 2, line 3 of the bill which deletes the word "shall" for "may". Rep. Rice stated that it was a language change that they caught.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 578

Motion: Rep. Rice moved HB 578 DO PASS. Rep. Brooke seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Wyatt moved to amend as follows:

Page 4, line 3 and line 22 on page 6

Following: line 2 on page 4 and line 21, page 6

Insert: "(viii) domestic abuse of the type described in

45-5-206 (1) (a);"
Renumber: subsequent subsection

Motion was seconded by Rep. McDonough and the amendment CARRIED with Rep. Knapp voting Nay.

Recommendation and Vote: Rep. Rice moved HB 578 DO PASS AS AMENDED, motion seconded by Rep. Darko and CARRIED unanimously.

HEARING ON HOUSE BILL 544

Presentation and Opening Statement by Sponsor:

Rep. Jim Rice stated that this bill is a technical house cleaning matter. In criminal cases the general rule is that the state cannot appeal, only the defendant can appeal. If he is convicted at the lower level he can appeal his conviction to a higher court and the state does not have the right to appeal unless it is a technical issue that falls under one on the sub categories of paragraph 2, 46-20-103. They are adding a sub category to cover a problem that has come up in the law and there will be other witnesses to explain it.

Testifying Proponents and Who They Represent:

John Connor, County Prosecutor's Services Bureau, Dept. of Justice, Montana County Attorney's Association
Pat Paul, Cascade County Attorney
Robert McCarthy, County Attorney, Butte Silver Bow, Immediate Past President of the Montana County Attorneys Assoc., Chairman, Legislative Committee of the Montana County Attorneys Assoc.

Proponent Testimony:

John Connor stated that this bill was requested by the County Attorneys Assoc. to correct what has become a real confounding problem to the prosecutor as they have adopted more and more statutes dealing with the mandatory minimum sentence. The legislature is responsible for passing the laws, and the courts are responsible for construing and applying those laws. When the legislature determines that something ought to be a law and that it is a mandatory obligation for the court to impose it and that is not done, then the state has no remedy. All this bill asks is the opportunity to allow them to present the issue to a higher court for examination if in fact it is determined that the appropriate mandatory minimum was not imposed or that the court acted inappropriately.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 16, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 578 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Page 4, line 3 and line 22 on page 6.
Following: line 2 on page 4 and line 21 on page 6
Insert: "(viii) domestic abuse of the type described in
45-5-206(1)(a);"
Renumber: subsequent subsection

MONTANA WOMEN'S LOBBYIST
FUND

EXHIBIT 5
DATE 2-16-89
HB 578

EXHIBIT 5
DATE 2-16-89
HB 578

P.O. Box 1099

Helena, MT 59624

406/449-7917

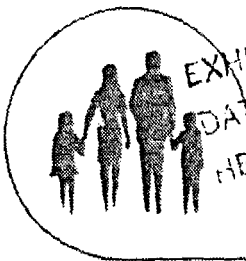
Testimony in support of HB 578
House Judiciary Committee
February 16, 1989

Mr. Chairman and Members of the Committee:

My name is Brenda Nordlund. Due to a conflict, I am unable to appear at the hearing on HB 578.

The Montana Women's Lobby supports the concept of HB 578 and urges a do pass recommendation from your committee.

Thank you.

EXHIBIT 6DATE 2-16-89HB 578

MENTAL HEALTH SERVICES, INC.

EXHIBIT 6DATE 2-16-89HB 578STUART KLEIN, MA
EXECUTIVE DIRECTOR

OFFICES

Regional Headquarters Administration

512 Logan
Helena Montana 59601
(406) 442-0310

Anaconda

Rm. 211, First Security Bank Bldg.)
P.O. Box 978
Anaconda, Montana 59711-0978
(406) 563-3413

Butte

2500 Continental Drive
Butte, Montana 59701
(406) 723-5489

Gilder House

2460 Kossuth
(406) 723-7104

Silver House

8 S. Montana Street
(406) 723-4033

Dillon

114 S. Pacific
Dillon, Montana 59725
(406) 683-2200

Helena

512 Logan
Helena, Montana 59601
(406) 442-0640

Sexual Assault Treatment Program

512 Logan
(406) 442-0649

Montana House

422 N. Last Chance Gulch
(406) 443-0794

Transitional House

1101 Missoula Avenue
(406) 443-4922

Northwest Adolescent Treatment Center

32 South Ewing
(406) 442-9902

Livingston

(Park County Courthouse)
P.O. Box 119
Livingston, Montana 59047
(406) 222-3332

Mountain House

106 N. Second
(406) 222-8202

February 14, 1989

The Honorable Jim Rice
House of Representatives
Capitol Station
Helena, MT 59620Ms. Becky Malensek
House of Representatives
Capitol Station
Helena, MT 59620

Dear Mr. Rice and Ms. Malensek:

Enclosed is the testimony you requested relative to
House Bill 578.I regret that I am unable to testify in person, and
appreciate the opportunity to submit this written
testimony.If I can be of additional assistance, please do not
hesitate to contact me.

Respectfully submitted,

*Ron J. Silvers*RON J. SILVERS, M.Ed., L.P.C. #124
Program Director
Sexual Assault Treatment ProgramRJS/nn
Enclosure

HOUSE BILL 578

House Bill 578 is entirely compatible with the Sexual Assault Treatment Program of Mental Health Service, Inc., Helena in that we believe at all times the burden of proof regarding responsible behavior in the community lies with the offender client in an out-patient setting. Offender clients must recognize that by their actions they have relinquished "automatic rights" to have visitation with children regardless of the specific nature of their sexual assault behavior.

In any recognized out-patient sex offender treatment program, the rights and safety of both the victim and the community are the first priority in assessing the offender client's treatment amenability. Sex offenders who have been court ordered into out-patient treatment either in lieu of serving their full prison sentence or after serving a portion of their sentence, must actively endorse the rights and safety of their victims, and children. They must strictly adhere to parole and probation rules as well as treatment plans which guard against any possible physical or emotional damage resulting from premature contact with vulnerable persons. An offender who is actively and sincerely engaged in sexual assault treatment will recognize that his or her problem is not curable and that he or she therefore must assume on-going responsibility for increasing awareness and control of destructive behaviors. Further, he/she must take every precaution against not only re-offense, but any behavior which puts anyone at risk or further injury.

A noncustodial father convicted of a serious crime such as sexual assault should bear the burden of proof as to whether his contact with his child is in their best interest. A sex offender client in treatment should be more than sensitive to and willing to abide by protective measures instituted for his/her children. Such an attitude would be indicative of genuine concern for the children and a willingness to work towards the possibility of establishing healthful contact over a gradual period of time.

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EXHIBIT 7
DATE 2-16-89
HB 578

February 15, 1989

Dave Brown, Chairman
Judiciary Committee

RE: HB578

I am a custodial parent, whose ex-husband has been convicted of sexually assaulting an 8 year old girl. If this bill were law, the safety and well-being of my two children, as well as many other children would be established. To force children to submit to unsupervised visits with a parent who has been convicted of sexual assault with a minor is an unwise experiment. Unfortunately, my children and I have had personal experience which makes it important to us that you help.

My worst fear is still unknown, had he molested his own two children? Interviews with welfare, the sheriff's office, counselors and our attorney's were inconclusive. Upon conviction of sexual assault on the 8 year old girl, my ex-husband was sentenced to 40 years as a dangerous offender with 20 years suspended. During the sentencing, the judge said he was still entitled to visitation - even while in prison.

After serving only 5 1/2 years, he is eligible for parole. I have consulted with an attorney and found that he is entitled to all visitation as set forth in our divorce. In spite of his conviction of the heinous crime described above and his refusing to go through the prison sexual offender treatment program.

To change the visitation order, I have to prove that his seeing the children would seriously endanger their physical, mental, moral or emotional health. I have to retain an attorney for myself, an attorney for the children, counselors for the children, all at my own expense. The burden of proof (and it is a heavy burden) is on me, the custodial parent.

I need your help. It has been established that sexual offenders cannot be cured, only treated. It is folly to trust them with children. These children need and deserve the protection of all the resources this society can provide.

This bill can help us all. My children and the many other abused children can be protected. My ex-husband must take responsibility for his actions and be required to prove he has reformed. He must assume the burden of proof to a court of law that his visitation would not be detrimental to our children.

If this bill becomes a law, I believe it could act to prevent child abuse. It would certainly protect children and it would make it possible for custodial parents to protect their families without choosing desperate measures such as going underground.

Children should not have to live in fear for their lives or losing their innocence because of an abusing parent.

Sincerely,

Rebecca C. Malensek

Rebecca C. Malensek
2655 Valley Drive
East Helena, MT 59635

227-6953 (home)
444-2803 (work)

EXHIBIT _____
DATE 2-16-89
HB 578

EXHIBIT 8
DATE 2-16-89
HB 578

**MONTANA COMMITTEE FOR
PREVENTION OF CHILD ABUSE**



P.O. Box 20152
Billings, MT 59104

February 10, 1989

Becky Malensek
2655 Valley Drive
E. Helena, MT 59635

Dear Ms. Malensek, and Members of the Committee:

On behalf of the children of Montana, the Montana Committee for Prevention of Child Abuse urges support for legislation that limits or restricts visitation rights of non-custodial parents who have committed certain crimes, including child abuse, as outlined in the legislation before you.

It is the belief of the Committee that the non-custodial parent should bear the burden of proving at the court hearing that visitation by the non-custodial parent is in the best interest of the child or children. Eliminating any possibility of harm or further abuse to the child by the non-custodial parent is a critical factor to insure before any visitation occurs.

We trust that the necessary legislative changes can be initiated that will best insure the child's safety and well being and not further subject them to unnecessary and preventable risk. Our state agencies, communities, and legislature must work together cooperatively in preventing child abuse for all of Montana's children. Our children's future depends on our cooperative efforts.

Please don't hesitate to contact our organization for any additional information.

Yours for Children,

A handwritten signature in cursive script that reads "Susan Sandwell".

Susan Sandwell, PHN, President
440 Parkway Drive
Kalispell, MT 59901
752-5583, 756-5633

EXHIBIT 9
DATE 2-16-89
HB 578

EXHIBIT 9
DATE 2-16-89
HB 578

TESTIMONY FOR THE HOUSE JUDICIARY COMMITTEE

Support HB 578 Visitation Rights of Noncustodial Parents
Convicted of Certain Crimes

Name: Karen Landers, MD, Pediatrician from Helena

Representing: Montana Council for Maternal and Child Health

The Montana Council for Maternal and Child Health represents hundreds of health care professionals serving Montanans statewide. Because their primary concern is the health and well-being of mothers and children, I speak in support of HB 578 which provides for changes in custodial laws when a noncustodial parent has been convicted of specified crimes.

Data from the Department of Family Services indicates that abuse of Montana children is on the increase. In FY 86, there were 1,187 substantiated cases of physical and emotional abuse, and 620 substantiated cases of sexual abuse.¹ While there is no typical child abuser, 80% of violent or negligent parents were themselves abused as children, and studies indicate that most violent criminals were severely abused.

Children need and deserve a nurturing and safe environment in which to grow and develop. It is both reasonable and desirable to provide our children with caretakers who will meet their children's needs with love and responsibility. Persons convicted of violent and sexual crimes should carry the burden of proving their ability to care for their children in this way when it is called in question.

The Montana Council for Maternal and Child Health advocates prevention in its goals for improving the health of mothers and children in Montana. We recognize in HB 578, a

EXHIBIT 7
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step towards preventing child abuse and urge your support.

Please give this bill your do pass recommendation.

References

¹ Department of Family Services, 1987.

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HB 578

carroll of montana
February 15, 1989

Chairman Dave Brown
House Judiciary Committee
Montana State Legislature

Gentlemen:

I am writing you in support of HB 578 - Visitation Rights of Non-custodial parents. I have many years of experience in child protection services, counseling abused children and their parents, and as an expert witness to the First Judicial District courts in child custody and visitation cases.

I believe the proposed change in the law is a necessary step in providing continued protection to children when the non-custodial parent presents a danger to them. At present, the burden of proof that a parent continues to present a danger is on the parent who has not been found guilty of a crime. This is not only unjust, it puts that parent to considerable expense to respond to a petition to change custody and/or visitation, and he/she may not have access to important information. The parent may have to obtain a full evaluation, including interviews with the children. Since I have done those evaluations, I know that they are expensive and traumatic to everyone, and it has been a source of anger to me that the parent whose parenting has not been in question has this burden.

When a parent has been judged harmful to a child it only makes sense that he/she have the burden of proof that there has been sufficient change to warrant greater access to the child. I have seen many good and concerned parents - often single parents already financially marginal - suffer severe stress and be put to great expense in order to protect their children. This should not happen. The person whose actions are in question should have the burden of proof.

I hope the Judicial Committee will recommend passage of HB 578. Thank you for your attention to this letter.

Sincerely,


Margaret Stuart M.S.W.
Director, Social Work Program
Carroll College
Helena, Montana

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February 16, 1989

Honorable Dave Brown
Chairman
Judiciary Committee
Montana State Legislature
Capitol Station
Helena, MT 59620

Dear Chairman Brown and Committee Members:

Please accept the following as written testimony supporting House Bill 578.

We support House Bill 578 for the following reasons:

1. The burden of proof is placed where it belongs, with the noncustodial parent, and makes that parent responsible for their actions.
2. The safety and protection of children from unnecessary and preventable risks are insured.

Thank you.

Jeanette Roberts
Blenda Craft
Kerri Carls
Lizaire Ketter
Kimberly Kuhn Smith
Robert M. Duncan
Maria V. Largent
Myrna Lee Snider
Maureen Hughes
Walt

Gay W. Bolding
Penny Clark
Janette Sullivan
Diane J. Danichek
Dore M. Jagg
Donald P. Thompson
Joe Courtney

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 578

DATE FEB. 16, 1989

SPONSOR REP. RICE

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Becky Malensak		✓	
Camille Malensak			
Elvira J. Malensak		✓	
John Marlsen	Family Services	✓	
Joan Udo	Family & Children's Law Section, St Bar	✓	
Brenda Nordlund	MT Women's Lobby	✓	
James Sanders MD	Montana Council for Mental and Child Health	✓	
Joan Reibich	Mt. Mental Health Center	✓	
Christie Marron	MT Mental Health Center	✓	
Jill Kennedy	Friendship Center - Helena	✓	
Kimberly C. Gardner	Burien Lodge	✓	
John Connor	Mt. County Attys Assn		
Joan Serquinn			
Peter Furk	Dept. of Justice	✓	
Ludith Carlsson	Mt CWP - NA Soc. Wkrs	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

he considers that contrary to law, too. He didn't differ with Senator Crippen's judgment of the situation. He said that he didn't want to use the words "and are illegal", because it might be construed as a presumption on his part. He thought the language in the bill might encompass any illegality that might occur. He said he would be happy to discuss any wording change the committee might want to consider. He just didn't want to make it too limiting, he said.

Closing by Sponsor: Rep. Rice closed saying he didn't really like the language "judgment that results in". He thought it would be better to say "imposing a sentence that is contrary to law".

DISPOSITION OF HOUSE BILL 544

Discussion: Senator Yellowtail asked about the term "alleged to be" as stated in the bill. Senator Crippen said that, when a lawyer is in court, he must use the term "alleged to be" contrary to law, rather than state an act is contrary to law.

Senator Pinsoneault asked for an opinion of amending that portion of the bill. Valencia explained that on line 45, after "is", strike "alleged to be" and insert "not consistent with mandatory sentencing procedure or as otherwise contrary to law." That would only make specific the mandatory sentencing procedure, she said.

Amendments and Votes: Senator Yellowtail MOVED to amend House Bill 544 on line 25 to delete "alleged to be". The MOTION CARRIED on a vote of 8 to 1, with Senator Crippen voting NO.

Recommendation and Vote: Senator Halligan MOVED that House Bill 544 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 578

Presentation and Opening Statement by Sponsor:
Representative Jim Rice of Helena, House District 43, opened the hearing. He said that House Bill 578 was to provide legal protection for children from potential

child abuse. The bill was requested by a constituent, he said. Several other states have similar legislation, he added, and said this bill was based upon a Colorado law. The bill would provide an objection process to visitation rights of a parent convicted of one of several serious crimes as listed on pages 3, 4 and 5 of the bill. Under current law, the mother would have to hire an attorney, and have a court order drawn up to modify visitation rights. This law would allow her some procedural leniency. She would only have to provide the father a 20-day notice of her objection to continued visitation between him and the children. If he does not respond to the notice, his visitation rights would be automatically suspended, according to Rep. Rice. If he responds and objects, then there would be a hearing, with the burden of proof being on the convicted parent to show that continued visitation would not be a pose a menace to the children and would be in their best interest. One section of the bill deals with a situation in which one parent has custody of the children, with the other party having visitation rights. The other section deals with a situation in which there is joint custody of the children.

List of Testifying Proponents and What Group they Represent:

Becky Walensek, herself
Dr. Karen Landers, Pediatrician, Montana Maternal and
Child Health Council
Judith Carlson, Montana Chapter of the Association of
Social Workers
John Connor, Montana County Attorneys Association
Peter Funk, Department of Justice
Christy Marron, Montana Mental Health Centers

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Becky Malensek said she requested the bill as the result of a personal situation. Currently, she said, the states of Hawaii, Texas and Massachusetts have enacted this law. She said that her divorced husband was convicted of raping a little girl. He was sentenced to 40 years, with 20 years suspended. He was out of prison after 5 1/2 years and was placed on parole. She was then informed that he would have all of the visitation rights that were granted at the time

of the divorce. She was told the burden of proof would be up to her to prove that her ex-husband would be a danger to her children. She presented Exhibits 1 and 2 to the committee.

Dr. Karen Landers presented written testimony to the committee (Exhibit 3).

Judith Carlson said this was an excellent way to preventing child abuse and sexual assault. She agreed that the burden of proof should be on the offender.

John Connor said he had attended a seminar on prosecution of child sexual abuse cases. He said that he learned that, recent studied on the counselling and therapy level, sexual deviants are not necessarily inclined to spare their own children from their sexual deviancy. Statistics have shown that they commit abuse within the home and get away with in in many cases. He concurred with this bill.

Peter Funk supported the bill. He said it was a very important in terms of its potential effect on the general situation of abuse of children. It will help out custodial parents and children who may be exposed to the behavior addressed by the bill. There is a misdemeanor offense included in the list, and he thought the committee should look at that. He wasn't suggesting removal of that, but called attention to the fact that the rest of the list names felonies. If constitutional challenge were brought, it might be easier to defend if the list were exclusively felonies, he said.

Christy Marron supported the bill.

Questions From Committee Members: Senator Crippen asked Peter Funk what the penalty was for sub (7). Peter Funk said for a regular offense it was \$500 and 6 months or a "high misdemeanor" subsection which is up to \$1,000.

Senator Crippen said he didn't share Mr. Funk's concern, as the misdemeanor listed had to do with children. He said the court would still have some discretion.

Senator Beck asked about "endangering the welfare". Peter Funk said he couldn't quote the particular statute, but that it talked about failure to maintain certain duties and care and defined those. It is a much broader statute than any of the other felonies on the list pertaining to the types of behavior that could be charged under that subsection. The rest are more clear, but for "endangering the welfare."

However, he didn't think it would place the bill in jeopardy by leaving that portion in it.

Senator Halligan commented that the bill indicated a requirement for conviction before the rest of the provisions "trigger in." He said he knew of cases where a major charge is made and the person remained out on bail and requested visitation. He thought the wording might be changed to "conviction or charge" of "plea of guilty." He thought "20 days" might also be a problem. If the party shows up and demands visitation within that time, what could be done to prevent it, he asked. A woman could be legally charged if she didn't allow visitation, but yet there might be cases when visitation shouldn't be allowed during the waiting period.

Representative Rice answered that they hadn't considered that. They were concerned about keeping parts of statute in effect, such as asking for a temporary restraining order. This simply expedites procedure without tightening the law more than was reasonable.

Senator Halligan asked what happened if the custodial parent were the one convicted. Rep. Rice said he believed the custodial parent would also be subject to the suspension of visitation under the second section of the bill.

Senator Jenkins asked if the mother would file for the 20-day notice. Rep. Rice said a notice would be filed very quickly after conviction.

Senator Crippen asked how long the suspension of visitation rights would be in effect. Rep. Rice said the rights of visitation would be suspended only until further action of the court (p. 6, l. 3). This provision is not making a permanent arrangement, only until the court decides otherwise, he said.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 578

Discussion: Senator Halligan brought up his concern with the 20-day waiting period and the fact that the person might have visitation during that time. He was also concerned that visitation might occur when a person was out on bail awaiting trial, or had plead guilty to a serious crime.

John Connor said the custodial parent could deny visitation during that period of time.

Senator Halligan said a lawyer might have to be contacted to do so and John Connor said not under this act.

Senator Mazurek suggested that the custodial parent could go to a "safe house" or do whatever she has to in order to keep the children away from a deviant father.

Senator Mazurek asked how often the term "knowingly endanger" was used. John answered not very often.

Senator Beck said he thought the "misdemeanor" portion of the bill should be deleted.

Amendments and Votes: Senator Beck MOVED to adopt an amendment to delete p. 4 and p. 6 referrals to "misdemeanor." The MOTION CARRIED FAILED by a vote of 3 to 5, with Senators Beck, Jenkins and Yellowtail voting YES.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 578 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 594

Presentation and Opening Statement by Sponsor:

Representative Fred Thomas of Stevensville, House District #62, opened the hearing. He said the bill was to revise district court judge's residency requirement. The law requires a district court judge to live within the city limits of the county seat. This bill strikes that requirement, allowing the judge to reside in the countryside or in any of the municipalities within the district. In years past, he said, there may have been a need for the judge to live within walking distance of the courthouse to provide immediate access to the court. Today's transportation outmodes that requirement, he stated.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-19-

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

Senate prepared testimony
identical to that presented
in the House.

DATE March 17, 1989

COMMITTEE ON Senate Judiciary

1062

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Gary Welsh	Dept Family Serv	HB113	✓	
Becky Malensek	Self	HB578	✓	
Jeanne Nelson	self	HB578	✓	
Jim Gardner	Self	HB578	✓	
Joan Bergman	self	HB578	✓	
Linda Scott	self	HB578	✓	
Peter Funk	Dept. of Justice	HB578	✓	
Kevin Landis MD	Montana Council for Maternal and Child Health	HB578	✓	
Steve W. Hay/Christie Marmorek	Montana Health Center	HB578	✓	
Timothy Maloney	Self	HB578		
EJ Maloney	no	HB578		

DATE (March) 4, 1989

COMMITTEE ON Senate Judiciary

2 of 2

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 3-17-89 House Bill No. 578 Time

NAME	YES	NO
SEN. BISHOP		✓
SEN. BECK	✓	
SEN. BROWN	<i>absent</i>	
SEN. HALLIGAN		✓
SEN. HARP		✓
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT		✓
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	3	6

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Senator Beck - Amend - to delete
"misdemeanor"

Motion failed 3 to 6

SENATE STANDING COMMITTEE REPORT

March 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 578 (third reading copy -- blue), respectfully report that HB 578 be concurred in.

Sponsor: Fice (Hazurek)

BE CONCURRED IN

Signed: Bruce D. Crippen
Bruce D. Crippen, Chairman

4/17/89
3/17/89
7:40 PM